

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH HOWARD, JR.,

Plaintiff,

v.

SONY MUSIC BMG
ENTERTAINMENT, *et al.*,

Defendants.

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CIVIL ACTION NO. H-06-3133

MEMORANDUM AND ORDER

Plaintiff Joseph Howard and Defendant Sony Music BMG Entertainment convened before the Court on June 12, 2007, to address Defendant's pending Motion to Dismiss (Docket No. 14). At the hearing, the Court noted that significant material outside the pleadings had been introduced. Therefore, the motion should be treated not as a motion to dismiss, but rather as a motion for summary judgment. FED. R. CIV. P. 12(b) (when, in connection with a Rule 12(b)(6) motion, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule to 56."). Following the approach outlined by Rule 12(b), Defendant's Motion to Dismiss shall be **DISMISSED WITHOUT PREJUDICE**. Both parties may file motions for summary judgment on or before July 12, 2007. Initial disclosures should be completed promptly. If any party requires further discovery in order to submit or respond to a summary judgment motion, a declaration should be filed with the Court explaining why the discovery is necessary.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 12th day of June, 2007.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**